



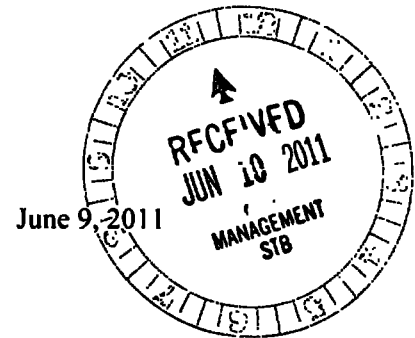
2299171

Eric M. Hocky  
Direct Dial 215 640 8523  
Email ehocky@thorpreed.com

ATTORNEYS AT LAW SINCE 1895

**VIA OVERNIGHT DELIVERY**

Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street SW  
Washington, DC 20024



Re: Lake Providence Port Commission –  
Trackage Rights Exemption – Delta Southern Railroad, Inc.  
STB Docket No. FD 35531

Dear Ms. Brown:

Enclosed for filing are the original and 10 copies of a Trackage Rights Notice of Exemption being filed on behalf of Lake Providence Port Commission, together with the required 20 extra copies of the map. Also enclosed is our check in the amount of \$1200 representing the filing fee.

Please time stamp the extra copy of the Notice of Exemption and return it to me in the stamped, self-addressed envelope provided for your convenience.

Please let me know if there are any questions regarding this filing.

Respectfully,

Eric M. Hocky

*Counsel for Lake Providence Port  
Commission*

**FEE RECEIVED**

JUN 10 2011

**SURFACE  
TRANSPORTATION BOARD**

EMH/e  
Enclosure

cc: Thomas F. McFarland, Esq. (via e-mail)

**FILED**  
JUN 10 2011  
**SURFACE  
TRANSPORTATION BOARD**

Pittsburgh

Philadelphia

Princeton

Wheeling

Thorp Reed & Armstrong, LLP  
One Commerce Square  
2005 Market Street  
Suite 1000  
Philadelphia PA 19103-7041  
215 640 8500  
215 640 8501 Fax

229917

Before the  
**SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35531

**LAKE PROVIDENCE PORT COMMISSION  
- TRACKAGE RIGHTS EXEMPTION -  
DELTA SOUTHERN RAILROAD, INC.**



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**NOTICE OF EXEMPTION**

ERIC M. HOCKY  
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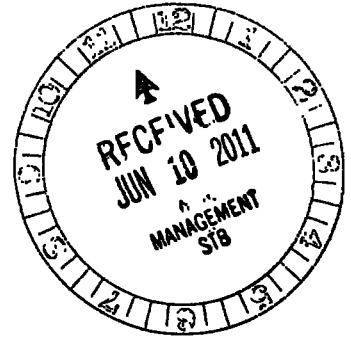
Attorneys for  
Lake Providence Port Commission

Dated: June 9, 2011

Before the  
**SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35531

**LAKE PROVIDENCE PORT COMMISSION**  
**- TRACKAGE RIGHTS EXEMPTION -**  
**DELTA SOUTHERN RAILROAD, INC.**



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**NOTICE OF EXEMPTION**

**ENTERED**  
**Office of Proceedings**  
**JUN 10 2011**  
**Part of**  
**Public Record**

**FEE RECEIVED**  
**JUN 10 2011**  
**SURFACE**  
**TRANSPORTATION BOARD**

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Attorneys for  
Lake Providence Port Commission

Dated: June 9, 2011

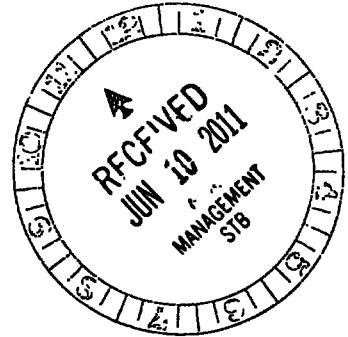
**FILED**  
**JUN 10 2011**  
**SURFACE**  
**TRANSPORTATION BOARD**

Before the  
**SURFACE TRANSPORTATION BOARD**

STB Docket No. FD 35531

**LAKE PROVIDENCE PORT COMMISSION  
- TRACKAGE RIGHTS EXEMPTION -  
DELTA SOUTHERN RAILROAD, INC**

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**NOTICE OF EXEMPTION**

Lake Providence Port Commission, a governmental agency created by Act 450 (R.S. 1501 et seq.) of the 1958 regular session of the Louisiana Legislature (the "Port Commission") is currently a non-carrier. The Port Commission files this Notice of Exemption pursuant to 49 C.F.R. §1180.2(d)(7) to exempt from the provisions of 49 U.S.C. §11323, the grant of overhead trackage rights by DSR to the Port Commission. The trackage rights are based on a written agreement and are not being filed or sought in a responsive application.

**Required Information**

In accordance with the provisions of 49 C.F.R. §1180.4(g), the Port Commission provides the following information as required by 49 C.F.R. §1180.6(a)(1)(i)-(iii), (a)(5), (a)(6), and (a)(7)(ii):

(a)(1)(i) The Port Commission has filed an offer of financial assistance ("OFA") to acquire 8.0 miles of rail line (the "OFA line") from Delta Southern Railroad, Inc. ("DSR") in STB Docket No. AB 384 (Sub-No. 2X), *Delta Southern Railroad, Inc.- Abandonment Exemption -In East Carroll Parish, LA*. The OFA was made pursuant to an Asset Purchase Agreement with DSR which has been accepted by DSR. By decision served June 7, 2011, the Board approved the transaction. Although the OFA line is currently out of service, and the Port Commission

ultimately intends to retain an operator to perform operations over the line, the Port Commission recognizes that it will have a residual common carrier obligation when it acquires the line. Under the Asset Purchase Agreement, DSR agreed to grant trackage rights to the Port Commission between the OFA line being acquired, MP 471.0 (Highway Barn near Lake Providence) and MP 472.25 in East Carroll Parish, Louisiana, where the trackage rights line connects with the private sidetrack and lead track owned by the Port Commission that allow service to the warehouses and dock at the Port, a distance of approximately 1.25 miles.

The trackage rights line is shown on the map attached as Exhibit A.

The name, business address and telephone number of Applicant are: Lake Providence Prot Commission, 409 Port Road, Lake Providence, LA 71254; (318) 559-2365.

The name, business address and telephone number of counsel to whom questions regarding the transaction can be addressed are: Eric M. Hocky, Thorp Reed & Armstrong, LLP, One Commerce Square, 2005 Market Street, Suite 1000, Philadelphia, PA 19103; (215) 640-8500.

(a)(1)(ii) The Port Commission does not intend to commence operations under the trackage rights until after the OFA line and adjacent lines to the north are rehabilitated. This will not occur until well after this notice becomes effective on July 10, 2011. The Port Commission anticipates that there will be a contract operator at the time the rights are first exercised.

(a)(1)(iii) The trackage rights will allow the Port Commission to connect its private tracks at the Port with the OFA line that it proposed to purchase.

(a)(5) The Port Commission is not currently a carrier. It will be acquiring the OFA line in Louisiana, and will be jointly acquiring a 24.1 mile line in Arkansas under a different OFA. The Port Commission ultimately intends to retain an operator to perform operations over the

OFA line, the Port Commission recognizes that it will have a residual common carrier obligation when it acquires the OFA line.

(a)(6) A map showing the trackage rights lines is attached as Exhibit A. Twenty extra copies of the map are also included.

(a)(7)(ii) A copy of the trackage rights agreement between the Port Commission and DSR is attached as Exhibit B.

### **Labor Protection**

Applicant understands that any employees adversely affected by the trackage rights are entitled to protection under the conditions imposed in *Norfolk and Western Railway Company - Trackage Rights - Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Railway, Inc. - Lease and Operate - California Western Railroad*, 360 I.C.C. 653 (1980).

### **Environmental and Historic Reports**

Under 49 C.F.R. §1105.6(c)(4) and 49 C.F.R. §1105.8(b)(3), no environmental or historic documentation is required.

**Caption Summary**

Attached as Exhibit C is the caption summary required by 49 C.F.R. §1180.4(g)(2)(iii).

Respectfully submitted,



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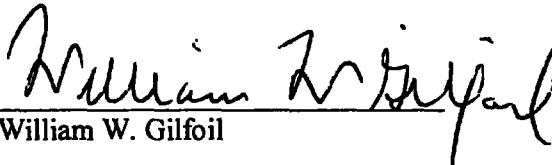
Attorneys for  
Lake Providence Port Commission

Dated: June 9, 2011

### VERIFICATION

I, William W. Gilfoil, hereby declare under penalty of perjury that I am Port Director, Lake Providence Port Commission, that I am duly authorized to present this Verification, and that I have read the foregoing Offer of Financial Assistance and know the fact asserted therein with respect to Lake Providence Port Commission are true and correct as stated to the best of my knowledge, information and belief.

Executed on June 9, 2011

  
William W. Gilfoil



## **EXHIBIT A**

### **MAP**

APPROXIMATE LOCATION OF MP 471.0



APPROXIMATE LOCATION OF MP 472.25

**EXHIBIT B**  
**TRACKAGE RIGHTS AGREEMENT**

## **TRACKAGE RIGHTS AGREEMENT**

THIS TRACKAGE RIGHTS AGREEMENT (TRA) is made and entered into as of this 26<sup>TH</sup> day of , May, 2011, between DELTA SOUTHERN RAILROAD, INC. (DSR) and LAKE PROVIDENCE PORT COMMISSION (the Port).

WITNESSETH:

WHEREAS, DSR has agreed to sell to the Port DSR's rail lines between Milepost No. 471.0, at or near a certain highway barn in East Carroll Parish, Louisiana, and Milepost No. 454.8 at the Louisiana-Arkansas State Line, and between Milepost No. 433.0 at or near Lake Village, Arkansas, and Milepost No. 408.9 at or near McGehee, Arkansas, a total distance of approximately 40.3 miles ("the purchased rail line"); and

WHEREAS, a sidetrack and a lead track that are used to provide rail service to warehouses and a dock owned by the Port ("the sidetrack and lead track"), extend from DSR's rail line between Milepost Nos. 471 and 472.25, a short distance south of the purchased rail line; and

WHEREAS, the Port desires to operate over DSR's tracks between Milepost Nos. 471 and 472.25 ("the Joint Trackage"), for the purposes of accessing, switching and servicing the Port's sidetrack and lead track; and

WHEREAS, DSR is agreeable to permit the Port to operate over the Joint Trackage, but only in accordance with the terms and conditions of this TRA, including a condition that DSR be permitted to continue to operate over the sidetrack and lead track to place loaded cars and to pick up empty cars at the Port's warehouses.

NOW, THEREFORE, DSR and the Port agree as follows:

### **SECTION 1 - GRANT OF TRACKAGE RIGHTS**

1.1 Subject to all terms and conditions of this TRA and subject to the Port obtaining any necessary regulatory authority or exemption, DSR hereby grants to the Port the non-exclusive right to operate over the Joint Trackage on an overhead rather than local basis, for the purpose of accessing the sidetrack and lead track to or from the purchased rail lines, and for no other purpose whatsoever.

1.2 The Joint Trackage is shaded in yellow, and the sidetrack and lead track are shaded in blue, on a drawing that is attached to this TRA as Appendix 1.

1.3 Under no circumstances may the Port permit any third party to use any or all of the Joint Trackage without DSR's permission, except as set forth in Section 18.

1.4 DSR shall continue to have the right to use the sidetrack and/or the lead track to place loaded cars and to pick up empty cars at the Port's warehouses.

## **SECTION 2 - TERM**

2.1 This TRA shall become effective on the date when it has been signed by both parties and shall continue in effect for a term of 20 years from that date, provided, however, that DSR may elect to terminate this TRA if the Port has breached a material provision of this TRA and has failed to cure such breach within 60 days of receipt of a written request by DSR to cure such breach. So long as the Port is not in default, the Port may renew this TRA for an additional term of 20 years by giving written notice to DSR at least 90 days prior to the expiration of the initial term.

2.2 Upon termination of this TRA by means of expiration or as a result of an uncured breach, the Port agrees to discontinue operations over the Joint Trackage and to seek any necessary regulatory authority or exemption for such discontinuance.

## **SECTION 3 - COMPENSATION**

3.1 In lieu of a trackage rights fee, the Port hereby agrees to pay to DSR a proportionate share of the actual, reasonable, verifiable costs incurred by DSR to maintain FRA Class I track standards on the Joint Trackage. DSR and the Port hereby agree that their respective proportionate share of maintenance costs will be based on relative usage of the Joint Trackage in each calendar year provided, however, the annual amount of maintenance shall be pro rated for the first and last year of this TRA. As an illustration, if in a calendar year the Port were to have transported 90 percent of the loaded and empty cars that were transported over the Joint Trackage, the Port would pay 90 percent of the actual maintenance costs incurred by DSR during such calendar year. DSR shall provide the Port a detailed schedule of the costs incurred, including the dates, descriptions of the work done, costs incurred and applicable back-up invoices by no later than each January 20 during the term of this TRA. The Port shall be entitled to audit the records of DSR related to the maintenance of the Joint Trackage within one year after the date that the schedule is provided to the Port.

3.2 By not later than each January 20 during the term of this TRA, DSR and Port shall each certify to the other the number of loaded and empty cars moved by each during the calendar year then ending. The Port shall make its payment of the proportionate share of maintenance cost to DSR on or before January 31<sup>st</sup>. DSR and the Port shall each be entitled to audit the records of the other within one year after the date of their respective certifications; any necessary payments or refunds after the audit shall be paid by the responsible party within 20 days after the results are provided .

3.3 Reserved.

3.4 Notwithstanding the foregoing, until DSR rehabilitates the Joint Trackage into Class 1 track condition as provided in Section 4.1 below, no compensation shall be due for use of the Joint Trackage by the Port.

#### **SECTION 4 – MAINTENANCE**

4.1 The Port shall provide DSR with a notice of its intent to use the Joint Trackage not later than ninety (90) prior to its intended date of use (the “Notice of Intent to Use Joint Trackage”). Upon receipt thereof, DSR shall then, at its sole cost and expense, commence all work necessary to rehabilitate the Joint Trackage into FRA Class 1 track condition. Thereafter, DSR shall maintain the Joint Trackage in FRA Class 1 track condition for the term of this TRA, subject to the provisions of Section 3 above concerning allocation of such costs.

4.2 DSR shall maintain, repair and renew the Joint Trackage with its own supervision, labor and materials. DSR shall take reasonable steps to ensure that any interruptions will be kept to a minimum and shall use reasonable efforts to avoid such interruptions.

4.3 If DSR does not rehabilitate or thereafter maintain the Joint Trackage in FRA Class 1 track condition, then Port may, at its option but without any obligation to do so, after giving DSR 30 days advance notice, perform work on the Joint Trackage to bring the Joint Trackage into FRA Class 1 track condition. Any costs incurred by Port in doing so may be deducted from future trackage rights payments.

#### **SECTION 5 - TRAIN DISPATCHING**

5.1 DSR shall have the right to dispatch trains over the Joint Trackage in a manner that ensures safe operations. If DSR does not have dispatchers available at the time that the Port wishes to operate over the Joint Trackage, then the Port may do so as permitted under the General Code of Operating Rules.

5.2 All rules, regulations, and orders for dispatching trains over the Joint Trackage shall be reasonable, fair, and just between DSR and the Port, and shall not unjustly discriminate against either of them.

5.3 With respect to the operation of trains, locomotives, and cars on and over the Joint Trackage, each party shall comply with all applicable laws, rules, regulations, and orders promulgated by any governmental body or agency having jurisdiction.

#### **SECTION 6 - LIABILITY AND INDEMNIFICATION**

##### **6.1 General.**

(a) The provision of this Section 6 shall apply only as between the parties hereto and their affiliated persons and entities, and are solely for their benefit. Nothing herein is intended to be for the benefit of any person or entity other than such parties. It is the explicit intention of the parties hereto that no person or entity other than such parties is or shall be entitled to bring any action to enforce any provision hereof against any of the parties hereto, and the assumptions, indemnities, covenants, undertakings and agreements set forth herein shall be solely for the benefit of, and shall be enforceable only by, such parties hereto.

(b) Notwithstanding anything contained in this Section 6, no provisions hereof shall be deemed to deprive DSR or the Port of the right to enforce or shall otherwise restrict any remedies to which they would otherwise be entitled under other provisions of this TRA as a result of the other party's failure to perform or observe any other obligation or duty created by this TRA.

6.2 Definitions. The parties agree that for the purposes of this Section 6:

(a) The term "Employee(s)" of a party shall mean all officers, directors, agents, employees, affiliates, contractors and employees of contractors of that party.

(b) "Claim" or "Claims" shall mean any and all claims, suits, actions, causes of action, demands, losses, liabilities, fines, judgments, penalties, costs and expenses whatsoever (including, but not limited to, attorney fees and court costs and expenses).

6.3 Employees of DSR. DSR shall be responsible for any and all wages, salaries, fees or benefits due DSR's Employees, contractors or agents as of the effective date of this TRA, or which become due on account of this TRA. DSR acknowledges that the Port is under no obligation to hire any of DSR's Employees, contractors or agents, and any contractual, severance, unemployment, or similar payment that may become due any DSR Employee, contractor or agent shall be solely the responsibility of DSR.

6.4 Indemnification by the Port. Subject to the provisions of Section 4.1, the Port accepts the current condition of the Joint Trackage and shall indemnify and hold harmless DSR, its parents, subsidiaries, affiliated entities, and their respective officers, directors, employees, agents, insurers, attorneys, successors and assigns, from any and all Claims arising out of, related to, or based upon any breach of this Agreement by the Port, or any act or omission of the Port in the operation of the Joint Trackage after the effective date of this TRA, including any Claims related to the investigation, mitigation or clean-up of Port wrecks, derailments, spills, or Environmental Problems occurring after such effective date, except to the extent such Claims were caused by the negligence of DSR.

6.5 Indemnification by DSR. DSR shall indemnify and hold harmless the Port, its parents, subsidiaries, affiliated entities, and their respective officers, directors, employees, agents, insurers, attorneys, from any and all Claims arising out of, related to, or based upon any breach of this Agreement by DSR, or any act or omission of DSR in the operation of the Joint Trackage prior to the effective date of this TRA, including any Claims related to the investigation, mitigation or clean-up of DSR wrecks, derailments, spills, or Environmental Problems occurring or existing prior to such effective date, or occurring after such effective date, except to the extent such Claims were caused by the negligence of the Port.

6.6 Each party hereto shall promptly handle any claims for which such party shall be responsible under the provisions of this Section 6. If any suit shall be brought against one of the parties hereto, and the other party shall under the provisions of this TRA be responsible for such Claim, then the party sued shall give prompt and full notice to the responsible party, so that the responsible party may assume such defense, but any sums which the non-responsible party shall,

in good faith expend in such defense (such as a motion to be dismissed from the suit), the responsible party shall promptly repay on demand.

6.7 In the event both parties hereto may be liable for any Claim, including, but not limited to Environmental Problems that both parties may have contributed to, the parties shall cooperate in the defense of such Claim. No party hereto shall be conclusively bound by any judgment against the other party, unless the former party shall have had reasonable notice requiring or permitting it to investigate and defend and reasonable opportunity to make such defense. When such notice, and opportunity shall have been given, the party so notified and the other party shall be conclusively bound by the judgment as to all matters which could have been litigated in such suit, including without limitation a determination of the relative or comparative fault of each.

6.8 DSR and the Port acknowledge that one or more persons or other entities (such as contractors or insurance companies) who are Employees of or otherwise affiliated with DSR may become Employees of or otherwise affiliated with the Port. To the extent that this Section 6 gives such persons or entities rights of indemnification from DSR or the Port, it is the intent of the parties that such indemnification shall not extend to such acts or omissions committed while employed or affiliated with the responsible party (i.e., DSR shall not be required to indemnify a contractor of DSR's for Claims prior to the effective date of this TRA, by virtue of the fact that such contractor may be a contractor of the Port, and the Port shall not be required to indemnify the Port's contractor for Claims after such effective date, by virtue of the fact that such contractor may have been a contractor of DSR). DSR AND THE PORT EXPRESSLY INTEND THAT WHERE ONE PARTY IS TO INDEMNIFY THE OTHER PURSUANT TO THE TERMS OF THIS TRA, SUCH INDEMNITY SHALL NOT INCLUDE (1) INDEMNITY FOR THE SOLE NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, OF THE INDEMNIFIED PARTY WHERE THAT NEGLIGENCE IS A CAUSE OF THE CLAIM; or (2) INDEMNITY FOR STRICT LIABILITY OF THE INDEMNIFIED PARTY RESULTING FROM A VIOLATION OR ALLEGED VIOLATION OF ANY FEDERAL, STATE OR LOCAL LAW OR REGULATION BY THE INDEMNIFIED PARTY.

## **SECTION 7 - COMPLIANCE WITH LAWS**

7.1 Each party shall comply with all applicable federal, state and local laws, rules, regulations, orders, decisions and ordinances, and if any failure on the part of any party to so comply shall result in a fine, penalty, cost or charge being imposed or assessed on or against another party, such other party shall give prompt notice to the failing party and the failing party shall promptly assume such liability and/or indemnify the other party for such fine, penalty, cost or charge and all expenses and reasonable attorneys' fees incurred in connection therewith, and shall, upon request of the other party, defend such action free of charge or expense to the other party.

## **SECTION 8 - INSURANCE**

8.1 Each party shall obtain and maintain railroad liability insurance, including Federal Employers' Liability coverage, with limits of not less than \$5,000,000.00 combined single limits



for bodily injury and property damage. The Port shall not be required to obtain such insurance until it has provided DSR with its Notice of Intent to Use Trackage Rights.

8.2 Prior to the proposed use of the trackage rights by the Port, each party shall provide the other party with a Certificate of Insurance evidencing that it has the required coverage in force and with DSR and the Port each being listed as an additional insured on the policy purchased by the other party

## **SECTION 9 - TAXES AND ASSESSMENTS**

9.1 DSR shall be responsible for payment of any real estate taxes, license fees, special assessments or other charges that may be levied or assessed against the Joint Trackage, provided, however, that DSR may, in good faith contest any such charges through the appropriate procedures.

## **SECTION 10 - CONDITIONS AND COMMENCEMENT**

This TRA is contingent upon the following conditions:

10.1 (a) The authority (or exemption) of the Surface Transportation Board (STB), without imposition of any material requirements not contained herein, including any labor conditions, as a condition to any such authority. The Port shall initiate an STB proceeding for authorization by appropriate application, petition or notice, and thereafter diligently prosecute proceedings for the procurement of such authority from the STB. DSR shall assist and support said application or petition and will furnish such information and execute, deliver, and file such instrument or instruments in writing as may be necessary or appropriate to obtain such authority. The Port and DSR agree to cooperate fully to procure all such necessary authority. The Port shall also make any necessary notifications to the FRA.

(b) DSR and the Port each shall be responsible for and shall bear labor claims, and employee protection payable to, its own respective employees (and employees of its respective affiliated entities) including any costs that either DSR or the Port may be required to pay relating to their own respective employees pursuant to any labor protective conditions imposed by the STB.

(c) In the event that any third party objects or otherwise opposes the grant of authority (or exemption, as the case may be), such authority shall, at the option of the Port, for purposes of this TRA, be deemed to have not taken effect until such objection or opposition is finally disposed of by the STB, regardless of whether or not the authority or exemption has taken effect in the meantime by operation of law.

10.2 The Port's conclusion of a due diligence review to confirm the condition of the Joint Trackage and the representations contained herein. In order to facilitate such review, DSR shall, promptly after the execution of this TRA, if requested by the Port, provide copies of all inspections, notices, environmental reports, surveys, valuation maps and track charts, related to Joint Trackage or rail operations thereon. DSR shall on request also allow the Port to inspect the

Joint Trackage by rail, and to inspect the structures and facilities thereon by such means as is reasonable. The Port shall have a right to terminate this TRA, without liability, if, after such review, it has reasonable cause to believe that the operation of the Joint Trackage is not economically feasible, or that the property has an Environmental Problem it determines to be unacceptable, or that the Joint Trackage is encumbered or impaired to an extent that determines to be unacceptable, or that the Joint Trackage is encumbered or impaired to an extent that the Port is dissatisfied with DSR's title to the Joint Trackage. Such due diligence review shall be completed not more than ten days after the effectiveness of STB authority as provided in Section 10.1.

10.3 The parties further agree that they shall sign and deliver such other and further documents after the effective date of this TRA as the other party may from time to time reasonably request, in order to carry out the intent and purposes of this TRA.

#### **SECTION 11 - INVOLUNTARY DISPOSSESSION**

11.1 If any attempt is made, including by condemnation or eminent domain, to take or otherwise involuntarily dispossess DSR and/or the Port of their respective rights to the Joint Trackage, DSR and the Port shall vigorously and in good faith oppose such attempt. DSR and the Port will cooperate in good faith with each other in such opposition.

#### **SECTION 12 - DEFAULT**

12.1 Either party hereto claiming default of any of the provisions of this TRA shall furnish notice and written demand to the other party for performance or compliance with the covenant or condition of this TRA claimed to be in default, which notice shall specify wherein and in what respect such default is claimed to exist and shall specify the particular section or sections of this TRA under which such claim of default is made. The party receiving the notice shall have 30 days after receipt of the notice to cure, or if the cure cannot be completed within 30 days, then such additional time as may be necessary to cure provided that the cure is commenced within 30 days and the party receiving notice diligently pursues such cure.

12.2 If the alleged default relates to a good faith dispute over the interpretation of the provisions of this TRA, the matter shall be submitted to mediation and arbitration pursuant to this TRA.

12.3 Failure of a party to claim a default shall not constitute a waiver of such default. Either party hereto entitled to claim default may waive any such default, but no action by such party in waiving such default shall extend to or be taken to affect any subsequent defaults or impair the rights of either party hereto resulting therefrom.

12.4 A party shall not be deemed in default of this TRA if it is prevented from performing its obligations due to Force Majeure.

12.5 In the case of a default other than one requiring arbitration, the aggrieved party may seek specific performance (and/or the payment of any sums owed) at the STB.

## **SECTION 13 – MEDIATION; ARBITRATION**

13.1 If at any time a good faith question or controversy (“Dispute”) shall arise between the parties hereto in connection with the interpretation of this TRA, such Dispute shall in the first instance be the subject of a meeting between the parties to negotiate a resolution of such dispute (the “Initial Meeting”). The Initial Meeting shall be held within thirty (30) days of a notice given by one party to the other of a Dispute, and shall be attended by representatives of each party with authority to resolve the Dispute, together with counsel if indicated in the notice. If, within thirty (30) days after the Initial Meeting, the parties have not negotiated a resolution or mutually extended the period of negotiation, either party may seek resolution of the question or controversy pursuant to procedures set forth in Sections 13.2 – 13.9. In addition, any party may initiate arbitration immediately should the parties be unable to schedule, or hold, the Initial Meeting within thirty (30) days of the foregoing notice of a Dispute.

13.2 If the Dispute is not resolved pursuant to the procedures set forth in Section 13.1, then upon written request of either party, setting forth the issue(s) in dispute, such Dispute shall be submitted to arbitration. Unless other procedures are agreed to by the parties, such arbitration shall be governed by the rules and procedures set forth in this Section 13. Until the Arbitrator shall issue the decision or award upon any question submitted for arbitration, performance under this TRA shall continue in the manner and form existing prior to the rise of such Dispute.

13.3 If the parties to the Dispute are able to agree upon a competent and disinterested arbitrator within thirty (30) days after written notice by one party of its desire for arbitration, then the Dispute shall be submitted to that Arbitrator. Otherwise, the Arbitrator may be appointed by the STB’s Dispute Resolution Office, upon application by either party, after written notice to the other party.

13.4 Upon selection of the Arbitrator, said Arbitrator shall proceed with reasonable diligence; give both parties reasonable notice of the time and place of hearing evidence and argument; may take such evidence as the Arbitrator shall deem reasonable or as either party may submit with witnesses required to be sworn, and hear arguments of counsel or others. If the Arbitrator fails to act, the parties or the STB shall appoint another to act in the arbitrator’s place.

13.5 After considering all evidence, testimony and arguments, the Arbitrator shall promptly make a decision or award and the reasoning for such in writing, which shall be binding on the parties when delivered to them. The Arbitrator shall not have the authority to amend, modify or terminate this TRA, or have the power to award consequential or punitive damages or determine violations of criminal laws or antitrust laws.

13.6 The award rendered by the Arbitrator may be entered as a judgment in any court having jurisdiction thereof and enforced as between the parties without further evidentiary proceeding, as if entered by a court at the conclusion of a judicial proceeding. The decision of the Arbitrator may be appealed, as if it were the decision of a trial court, to the United States District Court for the District of Louisiana. Said Court shall have the authority to award costs

and reasonable attorney fees as the Court deems just. After delivery of said decision or award, each party shall forthwith comply with said decision or award immediately after receiving it.

13.7 The compensation, cost, and expenses of the Arbitrator shall be divided equally between the parties.

13.8 Interest computed annually, at a rate equal to the Louisiana judgment interest rate, shall be applied to any and all arbitrator's awards requiring the payment of money and shall be calculated from thirty (30) days following the date of the applicable arbitration decision.

13.9 The books and papers of all parties, as far as they relate to any matter submitted for arbitration, shall be open to the examination of the Arbitrator.

#### **SECTION 14 - RIGHTS AND DUTIES UPON EXPIRATION OR TERMINATION**

14.1 The expiration or termination of this TRA shall not affect the liabilities or obligations of DSR or the Port that may have accrued prior to such expiration or termination. Title to any improvements or betterments to the Joint Trackage shall vest in DSR and the Port shall have no claim therefor. In the event that this TRA expires or is terminated, but the Port continues to operate over the Joint Trackage pending regulatory action, the parties agree to continue to observe the terms of this TRA, until the STB enters further orders.

#### **SECTION 15 - RAIL CROSSINGS AND EASEMENTS**

15.1 The rights to use the Joint Trackage granted in this TRA are accepted by the Port subject to those presently existing crossings and other licenses and easements, whether or not of record.

15.2 It is understood and agreed that agreements, easements, and licenses between DSR and third parties existing at the effective date of this TRA shall not be affected by such TRA.

## **SECTION 16 - WARRANTIES OF DSR**

16.1 DSR warrants that it is not aware of any Environmental Problem on the Joint Trackage, or the existence of any actions or threatened actions against DSR related to the Joint Trackage, by the FRA, or any other federal, state or local agency having jurisdiction.

16.2 DSR warrants that it has good and valid title to the Joint Trackage (either fee simple or railroad easement); that it has not, except as disclosed to the Port herein, sold, transferred, mortgaged, pledged, hypothecated, or otherwise encumbered or disposed of any part of all of said Joint Trackage, or any rights therein; and that DSR will defend such title against the claims of any other party.

16.3 DSR warrants that no other party has any right to operate Equipment on the Joint Trackage.

## **SECTION 17 - NOTICES**

All notices, demands, and similar communications required or permitted under this TRA shall be in writing and shall be deemed properly served if sent by a reputable national overnight courier service (i.e., UPS; FedX) or if sent by United States Certified Mail, return receipt requested, addressed as follows:

If intended for DSR: Mr. William Wainright  
Delta Southern Railroad, Inc.  
P.O. Box 1709  
Tallulah, LA 71282

If intended for the Port: James A. Thom, IV, President  
Lake Providence Port Commission  
409 Port Road  
Lake Providence, LA 71254

or at such other address which any party entitled to receive hereunder may designate to the other party in writing. Such Notice shall be effective one business day after dispatch by Courier, or three business days after mailing.

## **SECTION 18 - ASSIGNMENT**

18.1 Before selling the Joint Trackage during the term of this TRA, DSR shall give the Port a right of first refusal to match any bona fide third party offer for the Joint Trackage. The Port shall have thirty (30) days from the date of receipt of the notice of such third party offer in which to provide notice of its intent to exercise its right of first refusal, failing which DSR may sell the Joint Trackage, subject to the provisions of Section 18.2 provided, however, in the event such third party elects not to purchase other trackage of DSR as a result of such party's inability to purchase the Joint Trackage, then DSR shall not be obligated to sell the Joint Trackage to the Port. Additionally, in the event the third party elects to purchase other trackage of DSR and the

Port exercises its right to purchase the Joint Trackage, the Port agrees to enter into a trackage rights agreement with such third party on the same terms and conditions as are set forth in this Agreement.

18.2 In the event that DSR sells the Joint Trackage during the term of this TRA, DSR shall assign this TRA to the purchaser of the Joint Trackage, and the Port's rights under this TRA shall not be affected.

18.3 The Port may assign this TRA to a common carrier affiliate without the consent of DSR. The Port may also assign this TRA to a contract operator of the adjacent purchased rail line provided, however, the consent of DSR is first obtained, which consent will not be unreasonably delayed or withheld.

#### **SECTION 19 - MISCELLANEOUS**

19.1 This TRA shall be governed by and construed according to the laws of the State of Louisiana.

19.2 This TRA and the provisions thereof are for the exclusive benefit of the parties hereto and not for the benefit of any third party. Nothing herein contained shall be taken as creating or increasing any right in any third person to recover by way of damages or otherwise against any of the parties hereto.

19.3 If any covenant or provision of this TRA not material to the right of the Port to use the Joint Trackage shall be adjudged void, such adjudication shall not affect the validity, obligation or performance of any other covenant or provision which is in itself valid. No controversy concerning any covenant or provision shall delay the performance of any other covenant or provision. Should any covenant or provision of this TRA be adjudged void, the parties shall make such other arrangements as will effect the purposes and intent of this TRA.

19.4 When used herein, words having the singular form shall mean and include the plural and vice versa, unless the context requires otherwise.

19.5 When used herein, the term "including" shall be construed to mean, "including but not limited to," whether or not such phrase is used.

19.6 Terms used herein shall have the meaning normally given such terms in the railroad industry.

IN WITNESS WHEREOF, the parties have caused this TRA to be duly executed by the duly authorized officers or officials.

**DELTA SOUTHERN RAILROAD, INC.**

By:   
Authorized Representative

Date Signed: May 26, 2011

**LAKE PROVIDENCE PORT COMMISSION**

By: James H. Thomas II  
Authorized Representative

Date Signed: May 24, 2011

APPROXIMATE LOCATION OF MP 471.0



APPROXIMATE LOCATION OF MP 472.25



**EXHIBIT C**  
**CAPTION SUMMARY**

**SURFACE TRANSPORTATION BOARD**

**NOTICE OF EXEMPTION**

**STB Docket No. FD 35531**

**LAKE PROVIDENCE PORT COMMISSION  
- TRACKAGE RIGHTS EXEMPTION -  
DELTA SOUTHERN RAILROAD, INC**

Delta Southern Railroad, Inc. ("DSR") has agreed to grant overhead trackage rights to Lake Providence Port Commission (the "Port Commission"), which will allow the Port Commission to operate between the OFA line the Port Commission will be acquiring in STB Docket No. AB-384 (Sub No. 2X), MP 471.0 (Highway Barn near Lake Providence) and MP 472.25, where the trackage rights line would connect with the private sidetrack and lead track owned by the Port Commission that that allow service to the warehouses and dock at the Port, a distance of approximately 1.25 miles in East Carroll Parish, Louisiana. The trackage rights will be effective July 10, 2011.

The Notice is filed under 49 C.F.R. §1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. §10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated:

By the Board,

Rachel D. Campbell, Director, Office of Proceedings